

NO. D1-DC-10-900138

THE STATE OF TEXAS	§	IN THE 167TH
V.	§	DISTRICT COURT OF
GULF CHEMICAL & METALLURGICAL CORP.	§	TRAVIS COUNTY, TEXAS

PLEA AGREEMENT

The parties to this agreement are the State of Texas, by the Travis County District Attorney's Office (hereinafter "The State") and Gulf Chemical and Metallurgical Corporation (hereinafter "The Defendant"), and the Defendant's attorney of record, Tim Johnson.

1. The Defendant is named in an (11) Count Information filed in the Travis County District Clerk's Office. The Information alleges violations of Section 7.145 of the Texas Water Code.
 2. The Defendant has had the assistance of an attorney in connection with the charges against it. The Defendant states that its attorney has carefully reviewed this plea agreement with those persons designated by law and its bylaws to act on behalf of the Defendant and that this plea agreement has been signed by a person authorized by law and the bylaws of the Defendant to execute agreements on behalf of the Defendant.
- The parties state the following:

3. The Defendant agrees to enter a plea of guilty to 11 Counts in the Information which alleges that on or about the dates in the Information, it unlawfully discharged waste and pollutants into or adjacent to water in the state and it caused or threatened to cause water pollution. The State agrees to not further prosecute the Defendant for any additional wastewater violations in Chapter 7 of the Texas Water Code provided the defendant complies with the conditions of this plea agreement. The

Filed in The District Court
of Travis County, Texas
MAY 28 2010
At 10:54 A.M.
Amalia Rodriguez-Mendoza, Clerk

5-28-10
STATE'S
EXHIBIT

Defendant agrees and acknowledges that its failure to comply with the terms and conditions of this plea agreement may result in additional charges being filed by the State as set out further in paragraph 8, herein.

4. The Defendant understands that the Counts to which it is entering a guilty plea are third degree felonies and that a fine will be assessed for each count.

5. On the date of sentencing the Defendant will pay a fine for each count in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) for a total amount of TWO MILLION, SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$2,750,000).

6. The State acknowledges that during the investigation of this matter the Defendant voluntarily took steps to improve environmental conditions at its facility in Freeport, Texas and to identify and correct (including remove) any conditions that gave rise to the events resulting in its plea of guilty and to prevent and detect any future violations. In that regard, the State acknowledges that the Defendant has:

- a. retained two environmental consulting firms and initiated an investigation designed to correct discharge deficiencies;
- b. adopted and begun implementation of all improvements recommended by the consulting firms;
- c. voluntarily disclosed the results of its investigation to the Travis County District Attorney's Office and the Texas Commission on Environmental Quality (hereinafter TCEQ).
- d. fully cooperated with TCEQ and the Travis County District Attorney's Office during the course of the criminal investigation;
- e. immediately commenced an engineering investigation and the design and implementation of steps to improve the waste water treatment system to ensure compliance with its waste water permit.

7. The Defendant agrees that it shall complete the following conditions within one year from the date of sentencing:

a. Complete within one year from the date of sentencing, the Corrective Action Plans set forth in the November 24, 2009 CDM WWTP Compliance Audit Report, including but not limited to, the Corrective Action Plans for the design, operation and maintenance and sampling and reporting issues and for the effluent limit exceedances.

b. Submit within one year from the date of sentencing, a report to the Travis County District Attorney's Office, Environmental Crimes Unit detailing compliance with Corrective Action Plans set forth in the November 24, 2009 CDM WWTP Compliance Audit Report.

c. If any samples from Outfall 001 are to be analyzed by the internal laboratory for internal process controls or for regulatory purposes, the samples shall follow either TCEQ or EPA methodology found in either EPA SW-846 or the most current edition of Standard Methods.

d. The Defendant agrees to follow all TCEQ rules and permit conditions for the wastewater permit.

8. If Conditions set forth in paragraphs 7(a) through (d) are not complied with within one year of the date of sentencing, the State may bring additional criminal charges against the Defendant with respect to events discovered during the course of the investigation in this matter. In connection with this, the Defendant agrees to execute a Waiver of Statute of Limitations for a period of two years from the date of the execution of this Agreement. The State agrees that it will void the Waiver of Statute of Limitations upon completion of the conditions in Paragraph 7 above, or the expiration of one (1) year, whichever occurs later.

SIGNED:

1. David J. Pacella Corp. Representative
David Pacella
President, Gulf Chemical & Metallurgical Corp.

Date: May 28, 2010

2. Gregory D. Timmons
Gregory D. Timmons
General Counsel, Gulf Chemical & Metallurgical Corp.

Date: 5-28-10

3. Tim Johnson
Tim Johnson
Attorney for Gulf Chemical & Metallurgical Corp.

Date: 5.28.10

4. Patty Robertson
Patty Robertson
Assistant District Attorney
Travis County District Attorney's Office

Date: 5-28-10